IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE M.H.S. ANSARI

AND
THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

WRIT PETITION No.1266 of 2001

Between:

M/s.Medinova Diagnostic Services Ltd.,

Rep. by its General Manager, S.Salim. S/o. Hussain,
Hyderabad.

..... PETITIONER

AND

1. Director General of Health Services
(MG Section), Nirman Bhavan, New Delhi-110 001.
2.The Deputy Commissioner (M.Cell),
O/o. The commissioner of Customs (Air), Air Cargo Complex,

Meenambakkam, Chennai-600 027.

.....RESPONDENTS.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ , order or direction more particularly one in the nature of writ of Mandamus declaring the action of the respondent No.1 in withdrawing the Customs Duty Exemption Certificate granted in 1988 as arbitrary, illegal, Unconstitutional and violative of provisions of notification and also violative of principles of natural justice and consequently declare the proceedings No.F.No: Z 37011/117/88-MG dated 24-2-2000 of the 1st respondent as arbitrary and illegal and also consequently direct the respondents not to cancel any Customs Exemption Certificates granted to the petitioner during 1988-89 and also direct the respondents not to initiate any

proceedings for collection of Customs Duty for all the items mentioned in letter dated 2-7-1999 in F.No.Z 37011/17/88-MG of the 1st respondent.

Counsel for the Petitioner: Mr.T.P.ACHARYA

Counsel for the Respondents: Mr. A.RAJASEKHAAR REDDY,

S.C.FOR CENTRAL GOVT.,

The Court made the following:

THE HON'BLE SRI JUSTICE M.H.S.ANSARI

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AND

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THE HON'BLE SRI JUSTICE T.Ch.SURYA RAO

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WRIT PETITION No.1266 of 2001

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ORDER: (per Hon'ble Sri Justice M.H.S.Ansari)

In the instant writ petition, the petitioner has questioned the withdrawal of Customs Duty Exemption Certificates (CDECs) issued for import of the equipments. It is not in dispute that the petitioner imported certain equipments and availed of the benefit of exemption from customs duty under Notification No.64/88-Customs, dated 1-3-1988. The CDECs were issued in 1988. It is also not in dispute that the petitioner institution is only a diagnostic service centre. It has four such diagnostic centres in the cities of Hyderabad, Kolkata, Pune and Bangalore.

The order impugned was preceded by a show cause notice issued to the petitioner. In the reply dated 13-7-1999 to the show cause notice issued by first respondent, it has been stated as under.

"It may be incidentally mentioned that equipment for which Customs Duty Exemption Certificates were issued are in respect of diagnostic treatment and that the same does not require the indoor patients as our Institution is only Diagnostic Centre catering to the diagnostic treatment on the requisition of the Medical Practitioners and hospitals."

It is thus evident that the petitioner is not a hospital having in-patient facilities and has failed to discharge the obligation applicable to para 2 category of the table annexed to Notification No.64/88-Customs. It is for the said reason that the impugned order dated 24-2-2000 has been passed.

The case is squarely covered by the judgment of the Supreme Court in **Mediwell Hospital & Health Care Pvt. Ltd. v. Union of India**, and more particularly by the observations made therein which are as under.

> …….the very notification granting exemption must be construed to cast continuing obligation on the part of all those who have obtained the certificate from the appropriate authority and on the basis of that have imported equipments without payment of customs duty to give free treatment at least to 40 per cent of the outdoor patients as well as give free treatment to all the indoor patients belonging to the families with an income of less than Rs.500 per month. The competent authority, therefore, should continue to be vigilant and check whether the undertakings given by the applicants are being duly complied with after getting the benefit of the exemption notification and importing the equipment without payment of customs duty and if on such enquiry the authorities are satisfied that the continuing obligations are not being carried out then it would be fully open to the authority to ask the persons who have availed of the benefit of exemption to pay the duty payable in respect of the equipments which have been imported without payment of customs duty. Needless to mention, the Government has granted exemption from payment of customs duty with the sole object that 40% of all outdoor patients and entire indoor patients of the low income group whose income is less than Rs.500 per month would be able to receive free treatment in the Institute. That objective must be achieved at any cost, and the very authority who have granted such certificate of exemption would ensure that the obligation imposed on the persons availing of the exemption notification are being duly carried out and on being satisfied that the said obligations have not been discharged they can enforce realisation of the customs duty from them.

The petitioner having failed to fulfil the obligations, no fault can be found with the impugned order passed by first respondent withdrawing CDECs with a view to enable the realisation of customs duty.

Mr. T.P. Acharya, learned counsel for the petitioner, contended that the aforesaid judgment of the Supreme Court in **Mediwell Hospital** case (supra) has not considered the question with regard to withdrawal of CDECs. It was submitted that the question before the Supreme Court in that case was for grant of necessary certificate to import certain hospital equipments in accordance with Notification No.64/88-Customs. The other contention of Mr. Achayra is that the CDEC extends only till it is produced before the customs authorities and can have no validity or effect thereafter to warrant review of the decision or to withdraw the exemption

already granted.

The contentions, as above, in the facts and circumstances of this case, of the learned counsel, are misconceived. As held in **Mediwell Hospital** case cited supra, no importer can claim absolute exemption from payment of customs duty as of a right. The normal rule is that every import attracts duty under Customs Tariff Act unless otherwise exempted by a notification issued by the Central Government in exercise of power under Section 25(1) of the Customs Act. In the very same judgment, the conditions enumerated in the table annexed to Notification No.64/88 have been extracted. The petitioner having undertaken to discharge the obligations in para 2 category of the notification, cannot now be allowed to turn around and say that it has no such obligations to fulfil nor it is open to it to contend that it has no obligations with respect to providing free medical facilities, surgical or diagnostic treatment to indoor and outdoor patients. As regards the other contentions including the contention with respect to the power to withdraw the CDECs, the passage extracted supra from the judgment of the Supreme Court, in our view, is a complete answer to reject the contentions raised.

In the light of the above, the writ petition is liable to be and is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

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(M.H.S.ANSARI, J.)

31st December 2004.

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(T.Ch.SURYA RAO, J.)

ARS

1. Director General of Health Services
(MG Section), Nirman Bhavan, New Delhi-110 001.
2.The Deputy Commissioner (M.Cell),
O/o. The commissioner of Customs (Air), Air Cargo Complex,

Meenambakkam, Chennai-600 027.

3. Two C.D. copies.